IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

WILLIAM BROCKHAUS, Plaintiff, v. LUIS MIGUEL GALLEGO BASTERI, a/k/a LUIS MIGUEL, Defendant.	))))))))))	Civil Action No: 3:15-CV00030

PLAINTIFF'S THIRD AMENDED COMPLAINT

Plaintiff William Brockhaus ("Brockhaus" or "Plaintiff") brings this action against defendant Luis Miguel Gallego Basteri a/k/a Luis Miguel ("Miguel" or "Defendant") to recover from Defendant over two million dollars that Defendant withheld as payment for services that Plaintiff rendered pursuant to a management agreement (the "Agreement") whereby Plaintiff would provide Defendant professional management services (the "Services"). Plaintiff asserts claims for breach of contract and a suit in quantum meruit.

Parties

1. Plaintiff is a citizen of the State of Texas and regularly conducts business in Texas. (*See* Brockhaus Affidavit filed under seal).

2 Defendant is, upon information and belief, a citizen of Florida and regularly conducts business in multiple states across the United States including Texas. Miguel was properly served in this matter and can be served in the future, upon information and belief, through his business office manager, Mr. Bill Zysblat at 250 West 57th Street, Suite 1101, New York, New York 10107.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332, because Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds $75,000 exclusive of interest and cost.

4. This Court has personal jurisdiction over Defendant under both general and specific jurisdiction theories. Notably, Plaintiff negotiated and agreed to the terms of the Agreement in El Paso, Texas, and Defendant knew or had reason to know that Plaintiff would represent him while maintaining an office and working almost exclusively out of El Paso, Texas, when not on tour with Defendant. (*See* Brockhaus Affidavit). Furthermore, Defendant engaged in "continuous and systematic" activities within Texas, as he regularly scheduled and performed concerts in Texas while under the Plaintiff's management. Plaintiff managed Defendant and provided Services with regards to concerts in San Antonio, Texas, El Paso, Texas, Dallas Texas, and Austin, Texas. (*See* Brockhaus Affidavit filed under seal).

5. Venue in this District is proper pursuant to 28 U.S.C. § 1391, in that a substantial part of the events giving rise to the Plaintiff's claim occurred in this jurisdiction.

Facts

6. Plaintiff has known Defendant, Luis Miguel, since 1997. Defendant and Plaintiff's wife were lifelong friends. Plaintiff's wife introduced him to Defendant at the Camino Real Hotel in El Paso, Texas, after a concert in 1997. Plaintiff and Defendant came to know each other well from the time they met to the present. (*See* Brockhaus Affidavit filed under seal).

7. Plaintiff and Defendant would regularly travel together including meeting annually for most New Year's Eve and birthday celebrations. Furthermore, Plaintiff and Defendant traveled several times together with each other's families to various locations,

including without limitation, Las Vegas, Disneyland, Acapulco, Dominican Republic, and Cabo San Lucas among other places. (*See* Brockhaus Affidavit filed under seal).

8. When Defendant visited El Paso, he would regularly visit Plaintiff's residence and knew that Plaintiff maintained both his office and employment in El Paso, Texas. Plaintiff had Defendant's personal cell phone number and text number, and vice versa.

9. In or about August 2011, Defendant approached Plaintiff and asked if Plaintiff had any interest in becoming his manager. (*See* Brockhaus Affidavit filed under seal).

10. Plaintiff explained to Defendant that he was interested in the position; however, he would not move from El Paso, Texas for family reasons. Plaintiff further explained to Defendant that he intended on keeping his office in, and conducting business as Defendant's manager from, El Paso, Texas, at an office located at 4120 Rio Bravo Suite 311 El Paso, TX 79902 when not on tour with Defendant. (*See* Brockhaus Affidavit filed under seal).

11. Defendant agreed to Plaintiff's request and Plaintiff negotiated the management services Agreement with Defendant from his office and home in El Paso, Texas, with both Defendant and his then representatives. (*See* Brockhaus Affidavit filed under seal).

12. After much negotiation and upon belief that Defendant would employ Plaintiff as his personal manager, Plaintiff made the difficult decision to resign his employment of 22 years on or about April 1, 2012, and began working exclusively as Defendant's manager. (*See* Brockhaus Affidavit filed under seal).

13. In September, 2012, Plaintiff entered into the Agreement with Defendant, effective July 1, 2012, whereby Plaintiff would provide Defendant with professional management Services for a two year term and Defendant would pay Plaintiff ten percent (10%) of any gross income he earned. The Agreement automatically renewed until expressly terminated

in writing by either party. (*See* Brockhaus Affidavit filed under seal; *see also* July 1, 2012, Personal Manager and Personal Management Services Agreement, attached hereto as Exhibit A).

14. Under the terms of the Agreement, Plaintiff and Defendant agreed that Plaintiff would manage all of Defendant's day-to-day business affairs and provide management services, including without limitation, supervising any and all tour management and working with agents and marketing representatives to book and promote Defendant's tours. Plaintiff would occasionally represent Defendant in personal matters; however, those services were not part of the written Agreement. (*See* Brockhaus Affidavit filed under seal).

15. While acting as Defendant's manager, Plaintiff booked and worked on the "Hits Tour" in July or August 2013, which was awarded Tour of the Year by Latin Billboard. (*See* Brockhaus Affidavit filed under seal).

16. All work for the "Hits Tour" originated from Plaintiff's home or office in El Paso, Texas. Plaintiff was able to book and promote the entire tour, which spanned multiple countries and continents, including without limitation, El Paso, Texas, and San Antonio, Dallas, and Austin, Texas. (*See* Brockhaus Affidavit filed under seal).

17. From the worldwide "Hits Tour" that Plaintiff provided management services for, Defendant earned many millions of dollars. From the performances in El Paso, Texas, and San Antonio, Dallas, and Austin, Texas, alone, Defendant earned more than $1,600,000.00. In addition, Defendant spent many millions of dollars on lighting, staging, promotion, advertising, sound systems, and on other services and goods necessary for a Luis Miguel performance in all venues, including without limitation, El Paso, Texas, and San Antonio, Dallas, and Austin, Texas. (*See* Brockhaus Affidavit filed under seal).

18. Plaintiff negotiated the El Paso, Texas, and San Antonio, Dallas, and Austin, Texas shows with the buyer and promoters, on behalf of and for Defendant, personally at his office in El Paso, Texas, and at Mesa Street Grill in El Paso, Texas, primarily via email and telephone. Plaintiff has over 4,000 emails to and from promoters, agents, and representatives that were sent to and from El Paso, Texas on behalf of Defendant. On several occasions, representatives from prospective venues traveled to El Paso, Texas to finalize the negotiations, and enter into final contracts for the Defendant's performances. The negotiations, booking, promotions, and advertising on behalf of and for Defendant were performed in whole or in part in El Paso, Texas with the express knowledge and consent of Defendant. (*See* Brockhaus Affidavit filed under seal).

19. While working on the promotion and booking of shows, Defendant authorized the use of photos of him to be used as advertisement to promote his shows on various print media throughout the cities that he performed in, including without limitation, shows in El Paso, Texas, and San Antonio, Dallas, and Austin, Texas. (*See* Brockhaus Affidavit filed under seal; *see also* Advertising for Texas Concerts, attached hereto as Exhibit B)

20. At no time did Defendant or any representative ever complain to Plaintiff about the services rendered, or request that Plaintiff move his offices from El Paso, Texas. (*See* Brockhaus Affidavit filed under seal).

21. By February, 2014, Plaintiff had not been paid for at least $2,100,000.00 for services provided to Defendant for the "Hits Tour" under the terms of the Agreement. The amounts owed to Plaintiff by Defendant were in part for serviced provided in El Paso, Texas, and San Antonio, Dallas, and Austin, Texas. In or around February, 2014, Plaintiff was contacted by

one of Defendant's representatives in charge of accounts payable for Defendant to discuss being compensated in full for the services provided. (*See* Brockhaus Affidavit filed under seal).

22. As late as August, 2014, Defendant's accounts payable representative, Bill Zysblat, and Plaintiff were working on a contract to terminate the Agreement and pay Plaintiff in full for the services rendered to Defendant, including without limitation, all services provided with respect to the El Paso, Texas, and San Antonio, Dallas, and Austin, Texas performances. Plaintiff had multiple telephone conversations regarding termination of the Agreement and receiving payment in full. Both parties ultimately drafted a Termination Agreement. (*See* Brockhaus Affidavit filed under seal; *see also* Emails and "Termination Agreement", attached hereto as Exhibit C). Although Defendant's representatives contacted Plaintiff about payment for the services that he provided, Plaintiff has yet to receive payment.

23. Attorney James T. Zelloe contacted Plaintiff by electronic mail on September 10, 2014, and gave him notice that the Agreement was terminated pursuant to its terms or thirty (30) days after notice. Although Mr. Zelloe terminated the Agreement on behalf of Defendant, Plaintiff was not paid the outstanding balance for the services rendered under the terms of the Agreement. (*See* Brockhaus Affidavit filed under seal; *see also* Email from Mr. Zelloe attached as Exhibit D).

24. Plaintiff then requested that Luis Miguel pay him $2,100,000.00, or the unpaid amount due to him for the services rendered to Defendant. (*See* Brockhaus Affidavit filed under seal).

COUNT 1
(Breach of Contract)

25. Plaintiff realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 24 above.

26. Plaintiff entered into an Agreement with Defendant pursuant to which Defendant agreed to pay Plaintiff ten percent (10%) of his gross income and Plaintiff agreed to provide personal management Services. (*See* July 1, 2012, Personal Manager and Personal Management Services Agreement, attached hereto as Exhibit A).

27. Defendant breached the Agreement with Plaintiff by failing to tender payment for Services rendered in accordance with their Agreement. (*See* Brockhaus Affidavit filed under seal).

28. Plaintiff provided Services in accordance with the Agreement including managing all of Defendant's day-to-day affairs and providing Services including supervising any and all tour management and working with agents and marketing representatives to book and promote Defendant's tours. (*See* Brockhaus Affidavit filed under seal).

29. Plaintiff has been damaged as a consequence of Defendant's breach of contract in an amount in excess of $2,100,000.00, to be determined at trial. (*See* Brockhaus Affidavit filed under seal).

COUNT III
(Suit in Quantum Meruit)

30. Plaintiff realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 29 above.

31. Plaintiff conferred a benefit upon Defendant by providing management Services including supervising any and all tour management and working with agents and marketing representatives to book and promote Defendant's tours. (*See* Brockhaus Affidavit filed under seal).

32. Defendant accepted the benefits of the Services by employing the Plaintiff as his manager until October 10, 2014, in accordance with the terms of the Agreement. (*See* Brockhaus Affidavit filed under seal).

33. Defendant knew the benefit derived therefrom and consented to its provision by continuing to enjoy the benefits of the Services rendered by Defendant. (*See* Brockhaus Affidavit filed under seal).

34. Nevertheless, Defendant failed and refuses to pay the balance due for the Services that Plaintiff rendered, an amount in excess of $2,100,000.00, to be determined at trial. (*See* Brockhaus Affidavit filed under seal).

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff William Brockhaus prays that this Court:

1. Enter judgment in his favor and against the Defendant on all Counts of the Complaint;

2. Award Plaintiff all damages he sustained as a result of Defendant's conduct pursuant to Counts I and II, including without limitation an amount equal to the $2,100,000 owed for Services provided in accordance with the Agreement;

3. Award Plaintiff no less than $15,000.00 as reasonable attorney's fees through time of trial;

4. Award Plaintiff attorney's fees through appeal;

5. Grant Plaintiff judgment for pre-judgment interest;

6. Grant Plaintiff judgment for post-judgment interest at the highest rate permitted by law on the total amount of the judgment from the date of judgment until paid; and

7. Grant Plaintiff judgment for all costs of court and for such other and further relief, both general and special, at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

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By: *"/s/" Casey S. Stevenson*
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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2015, the foregoing Plaintiff's Third Amended Complaint was filed electronically and that notice of this filing will be sent to the following by operation of the Court's electronic filing system on Mitzi T. Shannon at Mitzi.Shannon@kempsmith.com and Shelly W. Rivas at Shelly.Rivas@kempsmith.com and Warner Young who has entered Pro Hac Vice on February 17, 2015 by certified mail because email address was not provided:

☐ Regular Mail, Postage Prepaid
☒ Certified Mail, Return Receipt Requested
☐ Facsimile Transmission
☐ Hand Delivery

By: *"/s/" Casey S. Stevenson*